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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LUCERO SANCHEZ,

Plaintiff,

vs.

Case No. 3:21-cv-00352-MMD-CSD

RENOWN HEALTH, a Nevada Non-Profit
Corporation, and DOES 1-20, inclusive,

Defendant.

PLAINTIFF'S RESPONSE IN
OPPOSITION TO MOTION FOR
SANCTIONS [ECF No. 98]

COMES NOW, Plaintiff Lucero Sanchez (hereinafter "Sanchez" or "Plaintiff")
by and through the undersigned counsel, and hereby files the following Response
in Opposition to the Motion for Sanctions [ECF #98] filed by Defendant RENOWN
HEALTH, a Nevada Non-Profit Corporation on June 5, 2024.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Renown's Motion

Renown alleges that Lucero Sanchez intentionally altered or fabricated her
diary to support her legal claims against them. According to Renown, Sanchez's
typewritten diary, produced during discovery, contains discrepancies when compared
to her handwritten diary and another version of the typewritten diary submitted to the
Nevada Equal Rights Commission (NERC). Renown points out that certain entries in

1 the typewritten diary were modified to suggest events occurred in 2017, after
2 Sanchez's demotion, which would support her claims of continued catering duties.
3 However, in the unaltered diary, these entries are dated 2016, which undermines her
4 allegations. Additionally, Renown discovered that several critical diary entries were
5 omitted from the version Sanchez produced during discovery, entries that could
6 potentially support Renown's case. This led Renown to conclude that Sanchez,
7 possibly with her counsel's involvement, engaged in bad faith conduct by falsifying
8 evidence to strengthen her case, warranting severe sanctions including dismissal of
9 her claims and reimbursement of legal fees incurred by Renown in addressing these
10 issues. While Renown is correct that the diary was altered, it is incorrect as to when
11 and how the alterations occurred.

12 **II. Background**

13 Sanchez was born in Durango, Mexico and first moved to the United States in
14 1981. Sanchez did not complete the third grade because she returned to Mexico and
15 worked on a farm. Sanchez returned to the United States around the age of 15 and
16 started working in housekeeping. Sanchez is an unsophisticated Plaintiff and was
17 misled by her previous counsel that allowing him to direct her to edit her diary in 2017
18 was appropriate. See Conf. Exhibit 1 to the Defendant's Opposition to Motion for
19 Summary Judgment at ECF No. 77-1 Deposition of Lucero Sanchez at 14:12, 16:22,
20 and 17:22.

21 **III. Why there are differing typewritten versions of the "diary"**

22 As detailed in the Declaration of Lucero Sanchez in Exhibit 1, attached hereto,
23 in 2017 Ms. Sanchez provided a typewritten copy of her Diary to her previous counsel
24 Mr. Art Bayer who then proceeded to direct her edit it. In her Declaration, Sanchez
25 identifies the handwritten diary attached to her Declaration as Attachment A, with
26 additional entries on separate sheets (Attachment B). At Mr. Bayer's request, she
27 typed a copy of the handwritten versions of her diary in 2017 (Attachment C) and
28 provided it to Mr. Bayer for editing. The edited version (Attachment D) was likely

1 provided to Renown and NERC. Emails from 2017 where Mr. Bayer discusses the
2 edits are attached to Sanchez's Declaration as Attachment E. In her declaration,
3 Sanchez states she believed (based on what Bayer told her) the edits were to clarify
4 her experiences and that they were appropriate. She confirms that the original
5 versions of her diary are presented in Attachments A and C.

6 In response to Interrogatory No. 15, in ECF 98-8, which requested "any and all
7 diaries or calendars kept by you from January 1, 2014, to the present," the Plaintiff
8 properly responded by stating that all such documents had been disclosed and
9 referred the Defendants to the documents in Bates Nos. 1436-1474 and 1550-1562,
10 which are the handwritten versions of the diary disclosed by Sanchez and described
11 in Attachments A and B to her Declaration in Exhibit 1 attached hereto.

12 **IV. Background**

13 The Plaintiff disclosed the handwritten diaries in Bates Nos. 1436-1474 and
14 1550-1562 to Renown in the Plaintiffs' Initial Disclosures (November 8, 2021 ECF No.
15 98-2), First Supplement (November 12, 2021 ECF 98-4), and Second Supplement
16 (November 22, 2021 ECF 98-6) respectively.

17 On January 12, 2022, Renown served its First Supplemental Disclosures,
18 which included NERC's response to a subpoena issued by Renown at the outset of
19 discovery. Another version of Sanchez's typewritten diary was included in NERC's
20 response and was bates stamped RENOWN000874-RENOWN000884.

21 On August 11, 2023, Renown filed for Summary Judgment and included the
22 versions of the diaries at SANCHEZ001266-SANCHEZ001280 [ECF No. 69-17],
23 which is a typewritten version of the diary, SANCHEZ001436 -SANCHEZ001474
24 [ECF No. 69-16].

25 In the Court's Order denying Summary Judgment, the Court made the following
26 ruling:

27 Plaintiff has presented the requisite very little evidence of pretext
28 to survive summary judgment. For example, Plaintiff noted in the
typewritten version of her diary that she was still being referred to

1 as the 'catering coordinator' and being asked to perform catering
2 tasks in 2017 (ECF No. 69-17 at 12), or after her demotion at the
3 end of 2016 (ECF No. 77-17 at 2 (noting a 'date prepared' as
4 December 29, 2016)). This is at least very little evidence that there
was still catering work to be done, suggesting that Defendant's
explanation for the demotion could be pretextual.

5 See ECF No. 81 at 14.

6 On March 18, 2024, Renown filed a Motion for Reconsideration [ECF No. 83]
7 seeking that the Court reverse its Order denying summary judgment to Renown on
8 Sanchez's Title VII retaliation claim.

9 In Sanchez's Response in Opposition to the Motion for Reconsideration, the
10 following argument was made:

11 The Court specifically noted in its Order at ECF #81 at 14,
12 Sanchez noted in her diary that she continued to be called the
13 'catering coordinator' and was tasked with catering duties in 2017,
14 ECF No. 69-17, page 12. And that this occurred after she was
15 demoted and had her pay cut at the end of 2016, See ECF No.
77-17, page 2.

16 See ECF No. 87 at page 8.

17 On May 22, 2024, at 5:01 p.m. counsel for Renown brought to the attention of
18 the undersigned counsel an issue related to the Court's finding that Ms. Sanchez was
19 tasked with catering duties in 2017 based on the contents of ECF No. 69-17 page 12.
20 See ECF No. 98-12. No date is provided for the diary entry at ECF No. 69-17, page
21 12, but because it was included at the end of ECF No. 69-17, the undersigned counsel
22 believed, as did the Court, that the entry was from 2017, as the exhibit 69-17 appears
23 to otherwise be in chronological order.

24 Mr. Bayer was counsel for Ms. Sanchez until March 15, 2023, when Mr. Bayer
25 filed a Motion to Withdraw as Counsel, which was granted. The undersigned counsel
26 did not begin to assist Ms. Sanchez with her claims until summer of 2021, long after
27 Mr. Bayer directed Sanchez to alter the diary in 2017, according to the emails in
28 Attachment E to Sanchez's Declaration in Exhibit 1. The undersigned counsel was

1 not aware of the fact that the typewritten version diary had ever been altered until the
2 issue was brought to his attention by Ms. Ketner on May 22, 2024.

3 As detailed in Renown's Motion, Renown's efforts to resolve the dispute at hand
4 did not involve any meaningful effort to meet and confer, rather, emails with
5 ultimatums and threats were sent. As shown in Exhibit 12 to Renown's Motion at 98-
6 12, Renown's counsel first emailed the undersigned counsel at 5:01 p.m. on May 22,
7 2024. There was no request to meet and confer. Rather, there was a demand that,
8 "I would hope that you will promptly agree to dismiss the retaliation claim. Please let
9 me know by tomorrow morning as I am going out of town for the holiday weekend and
10 need to get something on file before I leave. Feel free to call me if you want to discuss."
11 ECF 98-2 at page 2. This did not provide the undersigned counsel with adequate time
12 to resolve the issue, which as described above, involved determining when and how
13 the diary was altered.

14 On May 23, 2024, the next morning, after speaking with counsel for Renown
15 and acknowledging that an errata was required under NRPC 3.3(a)(3), the
16 undersigned counsel filed the Errata to the Plaintiff's Response in Opposition to the
17 Motion for Reconsideration at ECF No. 91, and withdrew the representation to the
18 Court based on the contents of ECF No. 69-17 page 12 made in Sanchez's Response
19 to Renown's Motion for Reconsideration at ECF No. 69-17 page 12 that this diary
20 entry was from 2017.

21 On May 28, 2024, the Court issued an Order at ECF No. 94 granting the Motion
22 for Reconsideration and Granting Summary Judgment on the Plaintiff's Title VII
23 Retaliation claim.

24 **V. Renown did not comply with the Civil Standing Order**

25 Under this Court's Civil Standing Order (ECF No. 27) Section V.B., before filing
26 a discovery motion, the parties are required to follow an informal discovery dispute
27 procedure. Initially, lead counsel for each party must meet and confer in person, via
28 videoconference, or telephone to resolve the dispute, as mere exchanges of letters or

1 emails are insufficient. If unresolved, the party seeking or opposing discovery files a
2 “Motion Regarding Discovery Dispute,” limited to 5 pages, including a declaration of
3 meet and confer efforts and relevant discovery requests and responses. The motion
4 should detail the unresolved issues, the moving party’s position with supporting facts
5 and legal authority, and the requested resolution. The opposing party must respond
6 within 2 court days, adhering to the same page limit and including only necessary
7 exhibits. The response must also outline the unresolved issues, the opposing party’s
8 position, and their proposed resolution. The court will then review both filings to decide
9 if formal briefing or further proceedings are needed.

10 Renown failed to comply with this process, and in such cases, the Standing
11 Order in Section 1 states: “Failure to comply with these rules and orders may be
12 grounds for monetary sanctions, dismissal, entry of judgment, or other appropriate
13 sanctions.” As Renown failed to comply with the standing Order, the Motion should
14 be denied.

15 **VI. Renown did not comply with the requirement to meet and confer**

16 Under LR IA 26-6(c) a discovery motion must be accompanied by a meet and
17 confer certification:

18
19 Discovery motions will not be considered unless the movant (1)
20 has made a good faith effort to meet and confer as defined in LR
21 IA 1-3(f) before filing the motion, and (2) includes a declaration
22 setting forth the details and results of the meet-and-confer
23 conference about each disputed discovery request.

24 Under LR IA 1-3(f) defines “meet and confer” as follows:

25 Whenever used in these rules, to “meet and confer” means to
26 communicate directly and discuss in good faith the issues required
27 under the particular rule or court order. This requirement is
28 reciprocal and applies to all participants. Unless these rules or a
court order provide otherwise, this requirement may only be
satisfied through direct dialogue and discussion in a face-to-face
meeting, telephone conference, or video conference. The

1 exchange of written, electronic, or voice-mail communications
2 does not satisfy this requirement.

3 Under LR IA 1-3(f)(1-4) also require a party filing a motion subject to the meet-
4 and-confer requirement must submit a declaration detailing all efforts, including the
5 time, place, manner, and participants of the conference. The movant must certify that,
6 despite sincere efforts, the parties could not resolve or narrow the dispute without
7 court intervention. Non-compliance with this requirement may lead to appropriate
8 sanctions under LR IA 11-8 and may result in the denial of the motion.

9 The facts presented do not demonstrate a sincere effort to resolve the issue on
10 Renown's part. As an unsophisticated plaintiff, Sanchez was misled by her previous
11 counsel into believing it was appropriate for him to direct her edit her diary. Renown's
12 approach to resolving the dispute involved issuing ultimatums rather than engaging in
13 meaningful dialogue. On May 22, 2024, Renown's counsel sent an email at 5:01 p.m.,
14 demanding a prompt dismissal of the retaliation claim without any effort to meet and
15 confer, providing an inadequate timeframe for Sanchez's undersigned counsel to
16 respond appropriately. Renown relied on emails and threats, violating both the spirit
17 and letter of the court's procedural rules, thereby failing to demonstrate a good faith
18 effort to resolve the dispute without Court intervention.

19 **VII. Sanctions are not justified under FRCP 37(c)**

20 Under NRCP 37(c), if a party fails to disclose information or identify a witness
21 as required by Rule 26(a) or (e), they are generally barred from using that information
22 or witness in motions, hearings, or trials, unless the failure is substantially justified or
23 harmless. The court can impose sanctions, including ordering the payment of
24 reasonable expenses and attorney's fees, informing the jury of the failure, or imposing
25 other appropriate sanctions. The discrepancies between the typewritten and
26 handwritten diaries arose from edits made under the guidance of Sanchez's previous
27 counsel in 2017, Mr. Bayer, which Sanchez believed were appropriate to clarify her
28 experiences. These edits do not amount to a failure to disclose but rather a
misunderstanding by Ms. Sanchez influenced by her former counsel. When the

1 discrepancies were brought to the attention of the undersigned counsel, immediate
2 corrective action was taken, including filing an errata to address and rectify the issue.
3 As the disclosure of the original diaries occurred in a timely and correct manner, any
4 perceived failure did not result in prejudice to Renown. Consequently, imposing
5 sanctions on Sanchez under NRCP 37(c) is unwarranted, as the core requirement of
6 disclosure was met, and any subsequent issues were promptly and effectively
7 addressed.

8 Further, under FRCP 37(c), sanctions are not warranted against counsel
9 because the rule does not permit sanctions against an attorney. See *Grider v.*
10 *Keystone Health Plan Cent., Inc.*, 580 F.3d 119, 141 (3d Cir. 2009); *Maynard v.*
11 *Nygren*, 332 F.3d 462, 470 (7th Cir. 2003); *Apex Oil Co. v. Belcher Co. of N.Y.*, 855
12 F.2d 1009, 1014 (2d Cir. 1988). Renown's request for dismissal of Sanchez's failure
13 to accommodate claim should be denied because any discrepancies in the diary were
14 a result of Sanchez's previous counsel's actions in 2017, not a failure to disclose under
15 FRCP 37(c)(1)(C). Again, Renown's understanding of the timeline related to the
16 diaries is backward. The request for attorney's fees for its Motion for Reconsideration
17 and Motion for Leave of Court to File Surreply in Support of Motion for Reconsideration
18 should be denied as the diary discrepancies (which both counsel for Renown and the
19 undersigned counsel failed to recognize) were promptly addressed and corrected
20 once discovered, negating any claim of bad faith or improper conduct warranting
21 sanctions under FRCP 37(c)(1)(A). The request for attorney's fees for the Motion for
22 Sanctions should be denied because of the failure to meet and confer as required,
23 and the discrepancies in the diary were promptly corrected FRCP 37(c)(1)(A). The
24 request to inspect and examine Sanchez regarding her diaries should be denied as it
25 would be unduly burdensome and unnecessary given the immediate corrective
26 actions taken upon discovering the discrepancies. Renown has had the diaries for
27 years and may address the factual issues surrounding the diaries at trial. The request
28 for a jury instruction should be denied since the alterations were made under previous

1 counsel's direction in 2017, as described above. Renown's request to preclude diary
2 entries should be denied because the discrepancies were promptly corrected and do
3 not warrant a sanction of exclusion from trial, particularly as the core evidence, Ms.
4 Sanchez handwritten diary, was disclosed properly.

5
6 **VIII. Dismissal of Sanchez's Title VII Retaliation Claim was the appropriate**
7 **corrective response to the factual discrepancy – any prejudice to**
8 **Renown has been cured**

9 Renown alleges that Sanchez intentionally altered her diary to support her
10 claims based on the theory that that the version of the diary Sanchez was questioned
11 about at her deposition was the "altered" version. As described above, Renown has
12 its chronology in reverse, and the "altered" version is the one disclosed by NERC in
13 response to Renown's subpoena.

14 Further, based on their own recitation of the facts, Renown has possessed
15 these disputed documents for years, and their theory that Sanchez manipulated the
16 diary for the reasons described in Renown's Motion would require a level of
17 sophistication and understanding of the case that Sanchez, with her limited education
18 and reliance on previous counsel's guidance, simply lacks.

19 Additionally, the edits to the diary took place in 2017, long before this case,
20 which was filed in August of 2021. Renown's counsel and the undersigned counsel
21 have had access to both versions of Sanchez's diary for several years, but both failed
22 to recognize the discrepancies between them. This oversight on both parties' part
23 indicates that the differences were not immediately apparent or significant enough to
24 be noticed until a discrepancy became apparent after an entry of the diary was relied
25 on by the Court in its Order denying Renown's Motion for Summary Judgment, as
26 described above. Neither party scrutinizing the evidence identified the discrepancies
27 until very recently, after both parties briefed the motion for summary judgment and a
28 motion for reconsideration. As the parties have expressed to the Court, the sheer
volume of documents disclosed in this case, "More specifically, Plaintiff produced over

1 2,000 documents while Defendant produced over 8,000 documents” [See Order at
2 ECF No. 90] makes the circumstances understandable.

3 When the issue of the diary discrepancies was brought to the undersigned
4 counsel's attention, corrective action was taken promptly and transparently. The
5 undersigned counsel immediately filed an erratum to address and correct the record,
6 demonstrating good faith in rectifying any mistake. The prompt correction negates any
7 argument that Renown suffered significant prejudice.

8
9 **IX. The Motion seeks sanctions against Ms. Sanchez, the undersigned, and
Mr. Bayer, but Mr. Bayer was not served with the Motion**

10 In its Motion, Renown seeks sanction against Sanchez, the undersigned
11 counsel, and Mr. Bayer, Sanchez’s previous counsel. As Mr. Bayer is the party who
12 in culpable, i.e. Mr. Bayer directed Sanchez to make edits to her “diary” as shown in
13 Attachment E to Exhibit 1, Bayer likely violated Nevada Rule of Professional Conduct
14 (“NRPC”) 3.3, candor towards the tribunal, and NRPC 3.4, fairness to opposing
15 counsel.

16 Where a court can sanction a party under its inherent powers, under the
17 applicable factors, sanctions on the undersigned counsel and Ms. Sanchez are not
18 warranted because the wrongful conduct occurred in 2017, long before the
19 undersigned counsel became involved in the case. “The following factors should be
20 evaluated when determining whether dismissal is an appropriate sanction: (1) the
21 public's interest in expeditious resolution of litigation; (2) the court's need to manage
22 its dockets; (3) the risk of prejudice to the party seeking the sanctions; (4) the public
23 policy favoring disposition of cases on their merits; and (5) the availability of less
24 drastic sanctions.” *Da Silva v. Smith's Food & Drug Ctrs.*, No. 2:12-cv-00595-GMN-
25 VCF, 2013 U.S. Dist. LEXIS 81217, at *5 (D. Nev. Feb. 6, 2013) citing *Henry v. Gill*
26 *Indus., Inc.*, 983 F.2d 943, 948 (9th Cir. 1993).

27 Sanchez, an unsophisticated plaintiff with limited education, was misled by her
28 previous counsel, Mr. Bayer, into believing that editing the diary was appropriate. Mr.

1 Bayer directed the edits in 2017, long before the current case began in 2021.
2 Renown's claim of bad faith conduct by Sanchez is unfounded given her lack of
3 sophistication and reliance on her previous counsel's wrongful guidance. The
4 undersigned counsel, unaware of the diary alterations until recently, promptly
5 addressed the issue upon learning of it. Furthermore, Renown failed to comply with
6 procedural requirements, including the meet and confer obligations. Renown's
7 approach lacked sincere efforts to resolve the dispute without the need for Court
8 intervention, drawing incorrect conclusions about the circumstances surrounding the
9 alteration of the diary, relying instead on ultimatums and threats.

10 Sanctions and the undersigned counsel are unwarranted under the relevant
11 standards. The public interest in the expeditious resolution of litigation, the need for
12 docket management, the risk of prejudice, public policy favoring case disposition on
13 merits, and the availability of less drastic sanctions all weigh against imposing any
14 sanction, much less severe case-ending sanctions. At the end of the day, in this case,
15 the version of the diary relied upon by Renown in its motions were the correct
16 versions, so there was no prejudice against Renown.

17 Therefore, sanctions should not be imposed on Sanchez or the undersigned
18 counsel, considering that Renown failed to follow the proper procedures in seeking
19 sanctions and jumped the gun in filing its Motion before fully understanding the facts
20 or allowing the facts surrounding Sanchez's diary to be investigated by the
21 undersigned counsel.

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X. Conclusion

WHEREFORE, Sanchez respectfully requests that the Motion be denied.

RESPECTFULLY SUBMITTED this Wednesday, June 19, 2024.

By: /s/ Luke Busby, Esq.

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Exhibit 1

1. June 15, 2024 Declaration of Sanchez

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing document by:

☐ personally delivering;
☐ delivery via Reno/Carson Messenger Service;
☐ sending via Federal Express (or other overnight delivery service);
☐ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,
☒ delivery via electronic means (fax, eflex, NEF, etc.) to:

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Dated: Wednesday, June 19, 2024.